

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

WAGNER MACIEL,

Plaintiff,

-against-

ADOPTION ORDER
20-CV-0458 (JS) (AKT)

BMW OF NORTH AMERICA, LCC,

Defendant.

APPEARANCES

For Plaintiff: Sergei Lemberg, Esq.
Vlad Hirnyk, Esq.
Lemberg Law, LLC
43 Danbury Road
Wilton, Connecticut 06897

For Defendant: Philip Semprevivo, Esq.
Sara E. Thompson, Esq.
Biedermann Hoenig Semprevivo, PC
60 East 42nd Street, Suite 660
New York, New York 10165

SEYBERT, District Judge:

Plaintiff Wagner Maciel ("Plaintiff") commenced this action against defendant BMW of North America, LLC ("Defendant"), asserting claims under the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 et seq., the U.C.C., New York General Business Law § 349, and common law fraud, arising out of Plaintiff's purchase of a BMW vehicle. (See Compl., ECF No. 1; Am. Compl., ECF No. 11.) On May 29, 2020, Defendant filed a motion to dismiss the Amended Complaint for lack of jurisdiction and failure to state a claim. (See Mot., ECF No. 17; Reply, ECF No. 27.) Plaintiff opposed the motion. (Pl. Opp., ECF No. 26; Pl. Suppl. Ltr., ECF No. 31.) On October

26, 2020, this Court referred the motion to Magistrate Judge A. Kathleen Tomlinson for a report and recommendation. (Oct. 26, 2020 Elec. Order.) On February 23, 2021, Judge Tomlinson issued a Report and Recommendation ("R&R"), recommending that the Court grant Defendant's motion and dismiss the Amended Complaint in its entirety. (See generally R&R, ECF No. 33.)

The time to object has expired and the parties have not filed objections to the R&R. Upon careful review and consideration, the Court finds Judge Tomlinson's R&R to be comprehensive, well-reasoned, and free of clear error. Accordingly, the R&R (ECF No. 13) is ADOPTED in its entirety, Defendant's motion to dismiss (ECF No. 17) is GRANTED, and the Amended Complaint is DISMISSED.

The Clerk of the Court is respectfully directed to enter judgment accordingly, terminate all pending motions, and mark this case CLOSED.

SO ORDERED.

/s/ JOANNA SEYBERT
Joanna Seybert, U.S.D.J.

Dated: March 16, 2021
Central Islip, New York